

Article 19 Requirement to provide information

- (1) The Licensee shall notify the Regulator of the occurrence of any of the following:
 - (a) any fact or event likely to affect the Licensee's ability to comply with any provision of this Rule or the Licence, including any changes to the Licensee's Telecommunications Networks that may detrimentally effect the permanence, availability or quality of the Telecommunications Services or Telecommunications Networks; and
 - (b) an insolvency related event in respect of the Licensee or a related company of the Licensee or any preparatory events that might lead to an insolvency-related event, immediately upon the Licensee becoming aware of the event.
- (2) The Licensee shall provide the Regulator with details of the Licensee's ownership, shareholding and management arrangements, including the names and other relevant details of the management team of the Licensee.
- (3) The Licensee shall notify the Regulator:
 - (a) of any proposed changes to the ownership, shareholding and management arrangements of the Licensee immediately upon the Licensee or any senior executive of the Licensee becoming aware of the proposed change; and
 - (b) in any event, immediately after the occurrence of the changes to the ownership, shareholding and management arrangements of the Licensee.
- (4) The Regulator may publish any information provided to it under this Licence or under an order made by the Regulator pursuant to Section 77 of the Telecommunications Act 2005. In exercising its discretion, the Regulator shall have regard to the obligations in relation to the preservation of business secrets and commercial confidentiality.

Article 20 National security and emergency services

- (1) The Licensee shall provide any customer using its Telecommunications Network or Telecommunications Services access to a public emergency call service to Police, Ambulance, Fire Brigade and other such emergency services as defined by the Regulator free of charge.

- (2) The Licensee shall ensure that numbers designated by the Regulator as public emergency call service numbers are continually available without restriction so that any customer using the Licensee's Telecommunications Network or Telecommunications Services dialling such numbers is provided with a public emergency call service at any time.

Article 21 Safety

- (1) The Licensee shall take proper and adequate safety measures for the safeguarding of life and property in connection with all installations, equipment, apparatus operated or used, including safeguarding against exposure to any electrical or radiation hazard emanating from the installations, equipment or apparatus used under a Licence.
- (2) The Licensee shall comply with the safety requirements set down in any safety rules issued by the Regulator under Section 8(1)(q) of the Telecommunications Act 2005 and any directions of the Regulator in relation to such rules.

Part VII Consequences of Amendment or Revocation of Licences

Article 22 Consequences of amendment

- (1) Where the Regulator amends a Licence pursuant to Section 18(1) of the Telecommunications Act 2005, the Licence will be deemed to be amended from the date specified by the Regulator and the Licensee shall comply with the amended Licence within the timeframe specified by the Regulator pursuant to Section 18(3) of the Telecommunications Act 2005.

Article 23 Consequences of revocation

- (1) Where:
 - (a) a Licence is revoked pursuant to Section 18(1) of the Telecommunications Act 2005; or
 - (b) where the Individual Licence has expired,

the Licensee shall immediately cease to operate any Telecommunications Network or provide any Telecommunications Service in respect of which the Licence was granted.
- (2) The Regulator may authorise the Licensee in writing to carry on providing any Telecommunications Service or owning or operating any Telecommunications Network for such duration, and on such terms and conditions, as the Regulator may specify.

- (3) Any amendment or revocation of the Licence shall be without prejudice to the rights and remedies which may accrue to the Licensee, the Regulator, the Ministry or any third party under the Licence or any law as at the date of termination except that the Licensee shall not have the right to seek a refund of the Licence fee or any other fee paid in advance.

Part VIII Public Disclosure of Licences

Article 24 Public disclosure

- (1) The Regulator shall make available to the public, for a reasonable fee:
- (a) copies of all Licences; and
 - (b) names of all Licensees.
- (2) The Regulator shall sell copies of the Class Licenses on request at copying cost.

Part IX Other

Article 25 Pronouncement

- (1) The Regulator is responsible for implementing and disseminating this Rule to all relevant parties.

Article 26 Enforcement

- (1) Any person who violates this Rule shall be subject to the enforcement measures and penalties specified in accordance with the Telecommunications Act 2005.

Article 27 Date of effect

- (1) This Rule becomes effective on the date of its signature.

[Date]

Regulator

[Signed and sealed]

Exhibit 4:

Guidelines: Application for a Foreign Investment Certificate in Samoa



GOVERNMENT OF SAMOA

Ministry of Commerce, Industry and Labour

Guidelines: Application for a Foreign Investment Certificate in Samoa.

The Foreign Investment Act 2000 became effective since 15th June 2000. The following list of information is required by the Ministry from Foreign Investors seeking Foreign Investment status under the Act. These Guidelines are enforced only in the interim period whilst the Ministry is working on the Regulations and procedures for granting of Foreign Investment Certificates. Please provide as much detail as possible regarding the foreign investor(s), their investment, and background.

Please be advised that the right and privilege to commence the process of investment in the sector for which you have applied is subject to all other laws and requirements in Samoa

- 1) Enterprise/ Business Name (as will be used to register for Business License)**
- 2) Form of Ownership: Company / Partnership / Sole Proprietor**
- 3) Trading Name (if applicable).**
- 4) Shareholder Information (if applicable):**
(Please provide details on appendix 1 attached on page 2. It is requested that true information is to be provided on this requirement.)
- 5) Please provide brief background information about shareholders (if Applicable)**
- 6) Contact details in country of residency (for all shareholders where necessary)**
- 7) Contact details in Samoa (for all shareholders)**
- 8) Enterprise registration No. & Date (from Registrar of Companies, MCIL)**
- 9) Nature/ Description of Business Operation**
- 10) Exact location of proposed site and specific contact details of the Enterprise**

Note: please be advised that you are required to submit to the Ministry a *status report* on the progression of your business on a six (6) monthly basis.

Appendix 1:

OWNERSHIP INFORMATION

Name of: ➤ Shareholder (s) ➤ Partners ➤ Sole Proprietor	
Citizen of: ➤ Shareholder(s) ➤ Partners ➤ Sole Proprietor	
Residency of: ➤ Shareholder(s) ➤ Partners ➤ Sole proprietor	
Photocopy of Passport ID number and photo: ➤ Shareholder(s) ➤ Partners ➤ Sole proprietor	
Share Capital (Dollar Value) SAT\$	
Percentage (%) Shareholding	
Please specify initial working capital and source of funds. SAT\$	

STAMP AND RETURN

**FOREIGN CARRIER AFFILIATION OF
AST TELECOM, LLC, D/B/A BLUE SKY COMMUNICATIONS, AMERICAN SAMOA
HAWAII CABLE, LLC, AND SAMOA AMERICAN SAMOA CABLE, LLC**

**I. INFORMATION REQUIRED BY 47 C.F.R. § 1.768: PRE-CONSUMMATION
FOREIGN CARRIER AFFILIATION NOTIFICATION**

**A. Name of the Newly-Affiliated Foreign Carrier and the Country at the
Foreign End of the Cable in Which It Is Authorized to Provide
Telecommunications Services to the Public or Where It Owns or Controls a
Cable Landing Station¹**

AST Telecom, LLC, d/b/a Blue Sky Communications ("Blue Sky"), American Samoa
Hawaii Cable, LLC ("ASHC"), and Samoa American Samoa Cable, LLC ("SASC," with Blue
Sky and ASHC, "Cable Landing Licensees") propose to become affiliated with SamoaTel
Limited ("SamoaTel"). SamoaTel is authorized to provide telecommunications services in the
Independent State of Samoa ("Independent Samoa") and also owns and controls the cable station
at Apia, Independent Samoa, where the American Samoa Hawaii cable system ("ASH Cable")
lands. On January 21, 2011, Blue Sky entered into an agreement with the Government of
Independent Samoa to acquire control of SamoaTel. Blue Sky directly owns 68 percent of a
special-purpose subsidiary, Blue Sky SamoaTel Investments, Ltd. ("BSI"), which will, upon
consummation, directly own 75 percent of SamoaTel's shares outstanding.

The Cable Landing Licensees have filed this notification on paper, as there is no form
within the International Bureau Filing System ("IBFS") for a foreign carrier affiliation
notification made pursuant to 47 C.F.R. § 1.768.²

RECEIVED - FCC
MAR 16 2011
Federal Communications Commission
Bureau / Office

¹ 47 C.F.R. § 1.768(e)(1).

² *See id.* §§ 1.768(n), 1.1000 *et seq.* (requiring electronic filing where forms exist within
IBFS).

B. WTO Status of Destination Country³

Independent Samoa is not a WTO Member. Although Independent Samoa has applied for WTO membership, it is currently a WTO observer.⁴

C. Name of the Cable System that is the Subject of the Notification, and the FCC File Numbers Under Which the License Was Granted⁵

This notification is made with respect to the ASH Cable, which the Commission licensed on January 9, 2009. *See* FCC File No. SCL-LIC-20080814-00016.⁶

D. Name, Address, Citizenship, and Principal Business of Any Person or Entity that Directly or Indirectly Owns at Least Ten (10) Percent of the Equity of Each of the Cable Landing Licensees, and the Percentage of Equity Owned by Each of Those Entities (to the Nearest One Percent)⁷

1. Existing Ownership of the Cable Landing Licensees

a. Blue Sky

Blue Sky is a wholly-owned, direct subsidiary of eLandia International, Inc. ("eLandia"), a Delaware corporation. eLandia's address is:

8200 NW 52nd Terrace, Suite 102
Miami, Florida 33166

³ 47 C.F.R. § 1.768(e)(2).

⁴ *See* World Trade Organization, Accession Status: Samoa, *available at* http://www.wto.org/english/thewto_e/acc_e/al_samoa_e.htm.

⁵ 47 C.F.R. § 1.768(e)(3).

⁶ *See Actions Taken Under Cable Landing License Act*, Public Notice, 24 FCC Rcd. 226 (2009) ("ASH Cable Landing License").

⁷ 47 C.F.R. § 63.11(e)(5).

Foreign Carrier Affiliation Notification of
AST Telecom LLC d/b/a Blue Sky Communications,
American Samoa Hawaii Cable, LLC, and
Samoa American Samoa Cable, LLC
15 March 2011
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eLandia is a diversified holding company with investments in the information technology and communications sectors. eLandia is currently controlled by **Pete R. Pizarro** through a voting trust, described below. Mr. Pizarro is also an individual shareholder of eLandia, holding approximately 2.75 percent of the issued and outstanding common shares of eLandia. Mr. Pizarro is the Chief Executive Officer of eLandia, and is a U.S. citizen. Mr. Pizarro's address is:

c/o eLandia International, Inc.
8200 NW 52nd Terrace, Suite 102
Miami, Florida 33166

The **Voting Trust** was established as part of eLandia's capital structure reorganization in February 2009. That transaction replaced Stanford International Bank Limited ("SIBL") as the majority owner of eLandia. SIBL was issued Voting Trust Certificates in exchange for SIBL's shares of eLandia. SIBL has become subject to a receivership imposed by the United States District Court for the Northern District of Texas in connection with a lawsuit by the Securities and Exchange Commission. The Receiver has "complete and exclusive control, possession, and custody" of "the assets, monies, securities, properties, real and personal, tangible and intangible, or whatever kind and description, wherever located" of SIBL.⁸ The Receiver confirmed by letter dated June 2, 2009, to Pete Pizarro that "the assets and business operations of eLandia and its subsidiaries are *not* part of the Receivership Estate. The Voting Trust Certificates are, however,

⁸ See Amended Order Appointing Receiver, *Securities and Exchange Commission v. Stanford Int'l Bank, Ltd.*, Case No. 3-09-cv-0298-N (N.D. Tex Mar. 12, 2009.), ¶¶ 1, 4.

a part of the Receivership Estate.”⁹ The Voting Trust now holds 44.75 percent of the common stock of eLandia, and also holds non-voting preferred stock of eLandia. Under the Voting Trust, Mr. Pizarro is given discretion to vote the eLandia common stock held by the Voting Trust on most matters (and the Voting Trust Agreement sets forth voting requirements on the other matters). Because Mr. Pizarro individually also owns 2.75 percent of the outstanding common stock of eLandia, Mr. Pizarro now exercises the right to vote 47.50 percent of the voting shares of eLandia, and has control of eLandia pursuant to the Communications Act of 1934, as amended, and the Commission’s rules and regulations.¹⁰

The Voting Trust agreement provides that Mr. Pizarro, as trustee, has both the “duty” and “the full power and authority” to vote the shares in the Voting Trust as in the judgment of the trustee may be for the best interest of eLandia “at all meetings of the stockholders” of eLandia and “all actions to be taken by written consent of the stockholders” on any and all matters and questions which may be brought before such meetings, including “in the election of directors.”¹¹ The only limitation imposed by the Voting Trust on Mr. Pizarro’s voting power is a requirement that Mr. Pizarro vote the shares in trust in the same proportion as the holders of the remaining outstanding shares of common stock present and voting at any meeting of the stockholders with

⁹ See Letter from Ralph S. Janvey, Receiver, to Pete R. Pizarro, CEO, eLandia International, Inc. (June 2, 2009) (emphasis added), *filed as attachment to* SEC Form 8-K filed by eLandia International, Inc. (June 3, 2009).

¹⁰ See *Stratos Global Corporation, Transferor, Robert M. Franklin, Transferee, Consolidated Application for Consent to Transfer of Control*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd. 21,328 (Dec. 7, 2007) (holding that trustee with the power to vote shares is deemed to control shares in trust).

¹¹ Voting Trust Agreement § 4.2(a).

respect to the sale of eLandia whether by merger, consolidation, sale of all or substantially all the assets, or other similar transaction and with respect to certain increases to the amount of shares issuable pursuant to a stock option or other equity plan.¹² Because Mr. Pizarro possesses voting control of the shares deposited by SIBL in the Voting Trust, he is deemed to control those shares.¹³ Following the consummation of the Proposed Acquisition (described below), Mr. Pizarro will individually own and control 0.42 percent of the voting stock of eLandia.

b. ASHC

The American Samoa Government (“ASG”) owns 33.33 percent of the member interests in ASHC. The ASG governs American Samoa, an unincorporated and unorganized territory of the United States. Although the United States Congress has given plenary authority over American Samoa to the U.S. Department of the Interior, the Secretary of the Interior has given American Samoa the authority to draft its own constitution, under which the democratically elected ASG functions through an executive branch led by the directly-elected governor and a bicameral legislature, known as the Fono. The current governor is the Honorable Togiola T.A. Tulafono, who maintains his office at the following address:

Office of the Governor
Executive Office Building
Third Floor, Utulei
Pago Pago, American Samoa 96799

¹² *Id.* § 4.2(b).

¹³ Mr. Pizarro may not be terminated as trustee by SIBL. Mr. Pizarro will cease to be trustee when he ceases to be the Chief Executive Officer of eLandia, or upon his resignation, death, disability, bankruptcy, or breach of the Voting Trust. *See id.* § 6.1.

eLandia Technologies, Inc. (“ELT”) owns 66.66 percent of the member interests in ASHC. ELT is a corporation organized under the laws of the State of Delaware. ELT is engaged in the provision of telecommunications products and services and information technology. ELT’s address is 8200 NW 52nd Terrace, Suite 102, Miami, Florida 33166. ELT is a wholly-owned, direct subsidiary of eLandia, as described in part I.D.1.a above. Upon consummation of the Proposed Acquisition, Amper will have an 84.88-percent direct interest in eLandia and a 56.58-percent indirect interest in ASHC.

c. SASC

ASHC owns 100 percent of the member interests of SASC. ASHC’s ownership is described in part I.D.1.b above.

2. Pending Transfer of Control of Cable Landing Licensees

On July 29, 2010, eLandia entered into an agreement (“Contribution Agreement”) with Amper, whereby Amper S.A. (“Amper”) will acquire approximately 84.88 percent of eLandia’s issued and outstanding shares and, upon closing, indirectly control the Cable Landing Licensees (“Proposed Acquisition”). Following the consummation of the Proposed Acquisition, the Cable Landing Licensees will continue to exist as indirect subsidiaries of Amper. eLandia, Amper, the Cable Landing Licensees, and their other affiliates have received Commission consent to the transfers of control embodied in the Proposed Acquisition.¹⁴

¹⁴ See IB Docket No. 10-229; FCC File Nos. SCL-T/C-20101022-00024, SCL-T/C-20101022-00025, SCL-T/C-20101022-00026, ITC-T/C-20101025-00425, ISP-PDR-20101022-00019; ULS Application Nos. 0004430192, 0004430196.

Pursuant to the Contribution Agreement, Amper will acquire 165,705,913 shares of eLandia's newly issued common stock in exchange for the contribution to eLandia by Amper of approximately 90 percent of the outstanding capital stock of Hemisferio Norte, S.A. ("Hemisferio"). Hemisferio owns 100 percent of Hemisferio Sul Participações Ltda. ("Hemisferio Sul"), which owns 88.96 percent of Medidata Informática, S.A. ("Medidata"), which owns 100 percent of XC Comercial e Exportadora Ltda. ("XC," with Hemisferio, Hemisferio Sul, and Medidata, the "Contributed Entities"). The shares of eLandia's common stock being issued to Amper will represent approximately 84.88 percent of eLandia's issued and outstanding shares of common stock following the closing of the transactions contemplated by the Contribution Agreement.¹⁵

In addition, the Contribution Agreement grants eLandia an option to buy Amper's remaining interest in Hemisferio in exchange for an option price of \$8.9 million, payable by the issuance of shares of eLandia common stock at a price per share equal to the fair market value of a share of eLandia common stock as of the date of the exercise of the option ("Hemisferio Option"). eLandia may exercise the Hemisferio Option within six months of the closing of the Proposed Acquisition. eLandia's exercise of the Hemisferio Option would significantly increase Amper's ownership of eLandia.

The Proposed Acquisition will not terminate the ownership interests of eLandia's current shareholders. Rather, the current shareholders' ownership shares will be diluted by eLandia's

¹⁵ For further detail and pre- and post-close ownership diagrams, please see the applications filed in IB Docket No. 10-229.

newly-issued common stock. The Voting Trust also currently holds non-voting preferred stock of eLandia, which will convert to common shares of eLandia as part of the Proposed Acquisition.¹⁶ In addition, pursuant to the Voting Trust agreement, following the Proposed Acquisition, the Voting Trust will terminate, and ownership of the shares previously held by the Voting Trust will revert to SIBL.¹⁷ The Receiver will have “complete and exclusive control, possession, and custody” of those shares.¹⁸

Amper is a Spanish *sociedad anónima*, i.e., corporation. It operates as a Spanish holding company whose shares trade publicly on the Madrid Stock Exchange under the symbol AMP. Amper’s operating units concentrate in three sectors: telecommunications, defense, and homeland security. Neither Amper nor any of its existing subsidiaries is a telecommunications carrier in any market. Amper’s address is:

Calle Marconi, 3
Parque Tecnológico Madrid
28760 Tres Cantos Madrid
Spain

Following consummation of the Proposed Acquisition, Amper will hold a direct 84.88 percent interest in eLandia, and an indirect 84.88 percent interest in Blue Sky and a 56.58-percent indirect interest in both ASHC and SASC.

¹⁶ SIBL holds Voting Trust Certificates which entitle SIBL to dividends and distributions from eLandia, if any, in respect of the shares SIBL deposited in the Voting Trust.

¹⁷ Voting Trust Agreement §§ 7, 8.

¹⁸ See Amended Order Appointing Receiver, *Securities and Exchange Commission v. Stanford Int’l Bank, Ltd.*, Case No. 3-09-cv-0298-N (N.D. Tex Mar. 12, 2009), ¶ 4.

Amper's only 10-percent-or-greater shareholder is **Tvikap AB** ("Tvikap"). Tvikap is a Swedish *aktiebolaget*, i.e., corporation. Tvikap's address is:

Höllandargatan 27
SE 113 59 Stockholm
Sweden

Tvikap's principal business is managing investments for institutional and private clients. Tvikap is privately held, owned by more than forty (40) corporate and individual investors and has no majority or controlling owner. Tvikap owns 22.011 percent of Amper's shares. Following consummation of the Proposed Acquisition, Tvikap will hold, on a fully-diluted basis, an indirect 18.68 percent interest in eLandia, and an indirect 18.68 percent interest in Blue Sky. Upon consummation of the Proposed Acquisition, Tvikap will have, on a fully-diluted basis, an indirect 12.46-percent interest in both ASHC and SASC.

E. Names of Any Interlocking Directorates with SamoaTel¹⁹

None of the Cable Landing Licensees has any interlocking directorates with SamoaTel.

F. Basis of Notification and Projected Closing Date²⁰

This notification is made pursuant to 47 C.F.R. § 1.768(a)(1), as one of the Cable Landing Licensees (Blue Sky) has entered into an agreement to purchase a controlling interest in a foreign carrier (SamoaTel) that is authorized to operate in a market (Independent Samoa) where the cable (the ASH Cable) lands.

¹⁹ 47 C.F.R. §§ 1.768(e)(5), 63.09(g).

²⁰ *Id.* § 1.768(e)(6).

47 C.F.R. § 1.768(a) does not clearly require a prior notification of the proposed affiliation by ASHC and SASC. Neither ASHC nor SASC is a parent entity of Blue Sky, so no notification is required under 47 C.F.R. § 1.768(a)(1).²¹ Moreover, no foreign carrier is acquiring an interest in ASHC or SASC, so no notification is required under 47 C.F.R. § 1.768(a)(2).²² Nevertheless, to avoid an unnecessary post-consummation filing by ASHC and SASC (as post-consummation filing would still be required under Section 1.768(c) of the Commission's rules with respect to these licensees)²³, those licensees are included within the scope of this notification.

Blue Sky's acquisition of SamoaTel is expected to close on March 31, 2011.

G. Dominant/Non-Dominant Status

During the pendency of this foreign carrier affiliation notification, each Cable Landing Licensee has agreed, upon issuance of special temporary authority ("STA"), to be regulated as dominant on the U.S.-Independent Samoa route. Nevertheless, upon approval of this foreign carrier affiliation and cancellation or expiration of the STA, the Cable Landing Licensees seek to

²¹ *Id.* § 1.768(a)(1) (requiring notification in the case of "[a]cquisition by the licensee, or by any entity that controls the licensee, or by any entity that directly or indirectly owns more than twenty-five percent (25%) of the capital stock of the licensee, of a controlling interest in a foreign carrier that is authorized to operate in a market where the cable lands").

²² *Id.* § 1.768(a)(2) (requiring notification in the case of "[a]cquisition of a direct or indirect interest greater than twenty-five percent (25%), or of a controlling interest, in the capital stock of the licensee by a foreign carrier that is authorized to operate in a market where the cable lands, or by an entity that controls such a foreign carrier.").

²³ *Id.* § 1.768(c) (requiring that "[a]ny licensee that becomes affiliated with a foreign carrier and has not previously notified the Commission pursuant to the requirements of this section shall notify the Commission within thirty (30) days after consummation of the acquisition.").

be regulated as non-dominant on the U.S.-Independent Samoa route, as SamoaTel lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market.

But for SamoaTel's market share in the market for fixed local termination (discussed further below), ASLI would qualify for a presumption of non-dominance on the U.S.-Independent Samoa route. The other relevant markets specified in 47 C.F.R. § 63.10(a) are not at issue. There is no distinct market for intercity services given the tiny market of Independent Samoa. As for the market for international facilities and services, Digicel and the Internet service provider CSL have full access to SamoaTel's cable station at Apia, as required by the Samoa Regulator and operate their own international gateways.²⁴ Moreover, the Cable Landing Licensees estimate that Digicel Samoa holds approximately 60 percent market share for international telecommunications services, whereas SamoaTel holds approximately 35 percent of that market.

Even in the market for local termination in Independent Samoa, however, SamoaTel lacks market power as defined by the Commission. In evaluating market power on the foreign end of the route which could affect competition adversely in the U.S. market, the Commission focuses on:

²⁴ See Individual Licence Granted by the Regulator Under the Telecommunications Act 2005 to American Samoa Hawaii Cable, LLC, for the Establishment and Operation of a Submarine Cable System in Samoa, to Be Known as the Samoa-American Samoa Cable System § 10.1 (May 2009) ("SAS Cable License"), attached as Exhibit 2 to this notification. ASHC later assigned its interest to SASC.

(1) the foreign incumbent's market share in the relevant terminating market on the foreign end of the particular route; (2) the supply elasticity of the market; (3) the demand elasticity of the market's customers; and (4) the foreign incumbent's cost structure, size, and resources. In evaluating market power, the Commission has recognized that neither market share, by itself, nor lower costs, sheer size, superior resources, financial strength, and technical capability, by themselves, confer market power. Indeed, the Commission has stated that, consistent with well-accepted economic principles, market conditions related to demand and supply elasticities are the more crucial determinants of a firm's market power. These conditions include the availability of close demand substitutes and ease of entry and expansion.²⁵

With respect to the first factor, SamoaTel's market share in the Independent Samoa market for local termination is small and has been shrinking. The predominant mode of communications in Independent Samoa is mobile, rather than fixed. Independent Samoa's mobile sector is dominated by Digicel Samoa, with more than 80 percent market share. By the Cable Landing Licensees' estimate, Digicel Samoa has more than 50,000 (mobile) subscribers, whereas SamoaTel has approximately 12,000 fixed subscribers and 13,000 mobile subscribers.

With respect to the second factor, the Independent Samoa market for local termination is characterized by significant supply elasticity. "Supply elasticity" is "a measure of the aggregate propensity of firms to expand output of a commodity given an increase in the commodity's price. Two factors determine supply elasticity in a market. The first is the supply capacity of existing

²⁵ *Americatel Corporation and Telecom Italia of North America, Inc.; Application to Modify Regulatory Classification From Dominant to Non-Dominant on the U.S.- Brazil Route, Memorandum Opinion and Order*, 19 FCC Rcd. 9672, 9683-84 ¶ 20 (Int'l Bur. 2004) ("Americatel Brazil Order").

competitors, and the second is low market entry barriers.”²⁶ In a mere three years, Digicel Samoa has captured more than 80 percent of the Independent Samoa mobile market and more than 70 percent of the local market (accounting for both fixed and mobile services). Moreover, as noted in parts II.A and B below, Independent Samoa has low market-entry barriers.

With respect to the third factor, the Independent Samoa market for local termination is characterized by significant demand elasticity. “Demand elasticity” is “a measure of the propensity of an incumbent’s customers to switch carriers or otherwise change the amount of service that they purchase from an incumbent in response to given changes in price and quality.”²⁷ In a mere four-and-a-half years, Digicel Samoa’s subscriber based has swelled from 10,000 to 50,000, including many former SamoaTel subscribers. With respect to the fourth factor, SamoaTel’s cost structure, size, resources and financial strength, and technical capabilities do not confer advantages constituting market power. Most importantly, SamoaTel does not receive subsidies from the Independent Samoa Government. For these reasons, the Cable Landing Licensees believe that they qualify for non-dominant regulation on the U.S.-Independent Samoa route.

²⁶ *Americatel Corporation and Telecom Italia of North America, Inc.; Application to Modify Regulatory Classification from Dominant to Non-Dominant on the U.S.-Argentina Route, Memorandum Opinion and Order*, 18 FCC Rcd. 26,811, 26,820-21 ¶ 16 n.81 (Int’l Bur. 2003) (“*Americatel Argentina Order*”).

²⁷ *Id.* at 26,821 ¶ 16 n.82.

II. INFORMATION REQUIRED BY 47 C.F.R. § 1.767(G)(2): EFFECTIVE COMPETITIVE OPPORTUNITIES SHOWING

The Independent Samoa market offers effective opportunities for U.S. investors and carriers to land and operate undersea cables in Independent Samoa. Independent Samoa has a well-developed regulatory framework to permit licensing and market access, ensure interconnection of foreign and domestic networks, safeguard competition, and enforce legal requirements and safeguards. In fact, Independent Samoa has already demonstrated its openness by licensing one of the Cable Landing Licensees party to this very notification—AHSC, a U.S. limited-liability company organized in Delaware and ultimately owned by eLandia, a company owned primarily by U.S. investors—to land and operate the ASH Cable segment between Independent Samoa and the Territory of American Samoa.²⁸

The Cable Landing Licensees believe that the showings provided below satisfy the requirements of the Commission's effective competitive opportunities test as applied to a proposed affiliation by cable landing licensees (Blue Sky, ASHC, and SASC) with a foreign carrier (SamoaTel) in a non-WTO Member destination market (Independent Samoa) where the undersea cable (ASH Cable) lands. The Cable Landing Licensees further believe it unnecessary for the Commission to impose any conditions to address any public-interest harms, of which the Cable Landing Licensees believe there are none.²⁹

²⁸ See SAS Cable License. ASHC later assigned this interest to SASC.

²⁹ See 47 C.F.R. § 1.768(g)(2) (stating that where "the foreign carrier is authorized to operate in, or own a cable landing station in, a non-WTO Member, the licensee must demonstrate that it continues to serve the public interest for it to retain its interest in the cable landing license for that segment of the cable that lands in the non-WTO destination market by

A. Background on the Independent Samoa Telecommunications Market and Regulatory and Investment Environments

In 2005, Independent Samoa adopted the Telecommunications Act 2005, liberalizing the Independent Samoa telecommunications market and opening it to competition.³⁰ As detailed

demonstrating either that the foreign carrier lacks market power in that destination market pursuant to § 63.10(a)(3) of this chapter or the market offers effective opportunities for U.S. companies to land and operate a submarine cable in that country.”); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23,891, 23,946 ¶ 130 (1997) (“*Foreign Participation Order*”) (stating that “we will continue to apply an ECO test in this context as part of our analysis under Section 2 of the Submarine Cable Landing License Act. Thus, when considering an application to land and operate a submarine cable that will connect to a non-WTO Member country, we will consider whether the applicant is or is affiliated with a carrier that has market power in the destination market of the cable, and if so, we will consider whether that destination market offers effective opportunities for U.S. companies to land and operate a submarine cable in that country. We will also continue to consider, in addition to the *de jure* and *de facto* ECO criteria, other factors consistent with our discretion under the Submarine Cable Landing License Act that may weigh in favor of or against grant of a license.”) and Note to Paragraph (g)(2) (stating that “[t]he assessment of whether a destination market offers effective opportunities for U.S. companies to land and operate a submarine cable will be made under the standard established in *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97–142 and 95–22, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23891, 23946 at paragraph 130, 62 FR 64741, December 9, 1997.”); “An act relating to the Landing and Operation of Submarine Cables in the United States” § 2, *codified at* 47 U.S.C. § 35 (“Cable Landing License Act”) (granting the President the right to deny a cable landing license to “assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States.”); Executive Order No. 10530 (May 10, 1954), *codified at* 3 C.F.R. 189 (1954–1958), *reprinted in* 3 U.S.C. § 301 app. (1988) (delegating licensing authority to the FCC).

³⁰ See Telecommunications Act (No. 20) 2005, as amended (“Telecommunications Act”), attached as Exhibit 1 to this notification and *available at* www.regulator.gov.ws/LegalFramework/TelecommunicationsAct/tabid/2978/language/en-US/Default.aspx.

below, the Telecommunications Act establishes a transparent and enforceable framework for market entry, competition, regulation of market dominance, interconnection, and a host of other sectoral matters.

The Telecommunications Act also established the Office of the Regulator (“Regulator”) as an independent and impartial regulator and tasks it with, among other responsibilities, granting individual licenses (including licenses to land undersea cables in Independent Samoa); fostering cost-based interconnection and competition in the telecommunications sector; enforcing prohibitions on abuse of dominant market position and on other anticompetitive activities; managing and licensing the radio spectrum; administering Independent Samoa’s national numbering plan; ensuring protection of consumers and their network information; and resolving telecommunications-related disputes. The Regulator is independent of the Minister of Communications and Information Technology (“Minister”). Although the Regulator provides policy advice to the Minister, the Regulator (and not the Minister) retains responsibility for licensing and market-entry-related matters.³¹

The Telecommunications Act prohibits a dominant service provider from abusing its dominant market position.³² The Regulator is charged with regulating such abuses of dominant

³¹ See Telecommunications Act §§ 8, 22. The Minister retains particular responsibility with respect to universal access and the universal access fund, *see id.* §§ 21, 22, and also makes interim appointments until a new Regulator is appointed by Independent Samoa’s head of state, *see id.* § 6(4).

³² *See id.* § 27.

market position, whether *sua sponte* or in response to a complaint,³³ and has exercised its powers to do so. Moreover, the Telecommunications Act establishes a variety of remedies to be imposed at the Regulator's discretion upon a finding of abuse of dominant market position.³⁴

Independent Samoa maintains a very open approach to foreign investment. It does not impose foreign investment restrictions in the telecommunications sector (including undersea cables), much less particular restrictions for classes or types of service.³⁵

B. Under Independent Samoa's Telecommunications Regulatory Framework, U.S. Investors and Carriers Are Permitted to Land and Operate Undersea Cables in Independent Samoa

U.S. investors and carriers have the legal ability to enter the Independent Samoa market to land and operate undersea cables in Independent Samoa. The Telecommunications Act requires a license for the landing and operation of undersea cables but does not impose limitations on the number of licenses or licensees or foreign ownership in licensees.³⁶ The Regulator has promulgated detailed rules setting forth license application criteria and application

³³ See *id.* § 29.

³⁴ See *id.* § 30.

³⁵ See Foreign Investment Act (No. 3) 2000, as amended ("Foreign Investment Act"), available at [www.samoa.ws/parliament/documents/acts/FOREIGN_INVESTMENT_ACT_2000 - ENGLISH.pdf](http://www.samoa.ws/parliament/documents/acts/FOREIGN_INVESTMENT_ACT_2000_-_ENGLISH.pdf) and attached as Exhibit 3 to this notification. Foreign investment is barred only in the following sectors: buses for transportation of the general public; taxis; vehicles for hire; retailing; and sawmilling. See *id.*, Schedule – Reserved List. Foreign investment is also limited to 40 percent for fishing vessels with shareholders. See Ministry of Commerce, Industry and Labour ("MCIL"), *Information Booklet on Procedures for Setting Up a Business*, at 3 (Feb. 2007), available at www.mcil.gov.ws/idipd/forms/setup_information_booklet.pdf.

³⁶ See Telecommunications Act §§ 12-17.

processing timeframes.³⁷ Similarly, the Licensing Rules do not impose limitations on the number of licenses or licensees or foreign ownership in licensees.³⁸

Foreign investors, including foreign investors in the telecommunications sector, must obtain a Foreign Investment Certificate from the Independent Samoa Ministry of Commerce, Industry and Labour.³⁹ The MCIL has previously granted such certificates to foreign investors in Independent Samoa's telecommunications market but declined to require such a certificate for a foreign-owned undersea cable landing in Independent Samoa.⁴⁰ The Cable Landing Licensees therefore believe that this showing regarding Independent Samoa's licensing and investment framework, taken together with the showings in part II.A. above and parts II.C-E below, satisfies the requirements of Section 1.768(g)(2) of the Commission's rules, the *Foreign Participation Order*, the Cable Landing License Act, and Executive Order No. 10530.⁴¹

³⁷ See Rules for the Licensing of Telecommunications Services and the Ownership or Operation of Telecommunications Networks in Samoa (effective Mar. 21, 2006) ("Licensing Rules"), attached as Exhibit 4 to this notification.

³⁸ See *id.*

³⁹ See Interim Guidelines: Application for a Foreign Investment Certificate in Samoa, available at www.mcil.gov.ws/idipd/forms/guidelines_FIC_app.pdf and attached as Exhibit 5 to this notification.

⁴⁰ For example, Digicel Samoa received such a certificate in connection with its acquisition of Telecom Samoa Cellular Limited. It did not require the issuance of such a certificate for ASHC or its assignee, SASC.

⁴¹ See 47 C.F.R. § 1.768(g)(2).

C. Independent Samoa's Interconnection Regime Ensures the Ability of U.S. Investors and Carriers to Operate Undersea Cables in Independent Samoa

Independent Samoa's telecommunications regulatory framework mandates reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services. Independent Samoa has adopted and implemented a transparent, pro-competitive interconnection regime focused on preventing abuses of dominant market position. This framework therefore ensures the ability of U.S. investors and carriers to operate undersea cables in Independent Samoa by ensuring their ability to terminate or pick up originating traffic in Independent Samoa.

At the most general level, the Telecommunications Act tasks the Regulator with promoting "adequate, efficient and cost-oriented interconnection of telecommunications networks and access by service providers to telecommunications facilities of other service providers" and to establish an open, non-discriminatory and commercially viable regulatory framework for interconnection and access with a view to minimizing regulatory and other barriers to entry into telecommunication markets."⁴² The Telecommunications Act directs the Regulator to impose interconnection arrangements and rates in the event that private negotiations fail and to resolve interconnection disputes among service providers.⁴³

Independent Samoa's regulatory framework includes many detailed legal requirements for interconnection:

⁴² See Telecommunications Act § 32.

⁴³ See *id.*

- ***Duty to Negotiate in Good Faith.*** Upon receipt of a written request by another service provider, a service provider must enter into good-faith negotiations to enter into an interconnection agreement to “connect and keep connected the telecommunications networks of both service providers” and “provide access to such telecommunications facilities, including but not limited to central offices and other switching equipment locations, mast sites, towers, poles, subscriber access lines and underground facilities, as are reasonably requested in order for the service providers to provide telecommunications to their customers.”⁴⁴
- ***Deemed Violations of Duty to Interconnect.*** The Telecommunications Act deems the following acts and omissions as violations of the duty to negotiate in good faith to interconnect:
 - (a) obstructing or delaying negotiations, or failing to make reasonable efforts to resolve outstanding disputes; (b) refusing to provide information about a service provider’s own telecommunications services or telecommunications network or other facilities that are necessary for the interconnection arrangements; (c) misleading or coercing a party into reaching an agreement the party would not otherwise have made; (d) interfering in any way with a service provider’s ability to communicate with the Regulator, including having a service provider sign a nondisclosure agreement that precludes the service provider from providing information requested by the Regulator; or (e) refusing to permit amendment of the interconnection agreement to take into account changes in circumstances, including changes to this Act, a regulation or rule.⁴⁵

⁴⁴ See *id.* § 33.

⁴⁵ See *id.* The Telecommunications Act further defines as abuses of dominant market position the “failing to supply essential facilities to a competitor within a reasonable time after a request and on reasonable conditions, or discriminating in the provision of interconnection or other telecommunications service providers; except under circumstances that are objectively justified based on differences in supply conditions, including different costs or a shortage of